Supreme Court, U. S.
FILED
SEP 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-238

LEROY CALLAHAN,

Petitioner,

v.

SUPERINTENDENT OF EDUCATION OF LEAKE COUNTY, MISSISSIPPI, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM B. COMPTON
P. O. Box 845
426 Citizens National Bank Building
Meridian, Mississippi 39301
HAROLD W. DAVIDSON
114 1/2 South Pearl Street
Carthage, Mississippi 39051
Attorneys for Respondents

TABLE OF CONTENTS

	Page
Summary of Reasons Why Writ of Certiorari Should Not Be Granted...	2
Opinions Below.....	3
Jurisdiction.....	3
Question Presented.....	3
Constitutional and Statutory Provisions Involved.....	4
Statement of the Case.....	4
Reasons Why This Court Should Not Grant Certiorari and Argument in Support of Said Reasons.....	10
I. The question presented by the petition is not expressed in the terms and circumstances of the facts of this case as required by Rule 23 (c) of the Supreme Court of the United States.....	10
II. The form of the question presented by the petition is misleading as to issues in this case.....	14
III. This Court could not change the decision in this case unless it first overturned questions of fact decided against the petitioner by the Board, the District Court and the United States Court of Appeals for the Fifth Circuit.....	18

IV. The decision in this case does not conflict with decisions of this Court and other federal courts..... 19

V. The decision in this case involves only the assertion by the petitioner that he was not rehired for a constitutionally impermissible reason and the petitioner failed to prove his assertion. The decision in the case does not jeopardize the employment of school administrators and teachers..... 20

VI. The decisions in this case were right in the Courts below..... 21

Conclusion..... 22

TABLE OF CITATIONS

Cases: Page

cf. Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961)..... 15

Ferguson v. Thomas, 430 F.2d 852, 856 (5th Cir. 1970)..... 15

Henry v. Coahoma County Board of Education, 246 F.Supp. 517 (1963), affirmed 353 F.2d 648 (1965)..... 12

Lott v. State ex rel Kelly, 239 Miss. 97, 121 So.2d 402 (1960).. 12

Thompson v. Madison County Board of Education, 476 F.2d 676 (5th Cir. 1973)..... 16

Toups v. Authement, 496 F.2d 700 (5th Cir. 1974)..... 16

Constitution and Statutes:

United States Constitution

First Amendment..... 11
Fourteenth Amendment..... 11

Mississippi Statutes

Section 37-9-15..... 6

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. 75-238

LEROY CALLAHAN,

Petitioner,

v.

SUPERINTENDENT OF EDUCATION OF LEAKE COUNTY, MISSISSIPPI, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Come now the Superintendent of Education of Leake County, Mississippi; the Leake County, Mississippi, Board of Education; and, the board members, J. Palmer Brantley, J. M. Blocker, John Calvin Smith, Mrs. Loutrelle Stribling and R. T. Trippe; hereinafter referred to as respondents; and, file their brief in opposition to the petition of Leroy Callahan for writ of certiorari to the

United States Court of Appeals for the Fifth Circuit.

The respondents are opposed to this Court granting the requested writ of certiorari for the following reasons, to-wit:

I. The question presented by the petition is not expressed in the terms and circumstances of the facts of this case as required by Rule 23 (c) of the Supreme Court of the United States.

II. The form of the question presented by the petition is misleading as to issues in this case.

III. This Court could not change the decision in this case unless it first overturned questions of fact decided against the petitioner by the Board, the District Court and the United States Court of Appeals for the Fifth Circuit.

IV. The decision in this case does not conflict with decisions of this Court and other federal courts.

V. The decision in this case involves only the assertion by the petitioner that he was not rehired for a constitutionally impermissible reason and the petitioner failed to prove his assertion. The decision in the case does not jeopardize the employment of school administrators and teachers.

VI. The decisions in this case were right in the Courts below.

The respondents will first reply to the petition as filed, to-wit:

OPINIONS BELOW

The respondents admit to the recitations under this heading in the petition

JURISDICTION

The respondents admit to the recitations under this heading in the petition.

The respondents deny that this Court should assume jurisdiction of this case for the reason that the decisions of the lower courts are not in conflict with the decisions of this Court and other federal courts.

QUESTION PRESENTED

The respondents deny that the question presented by the petition is expressed in the terms and circumstances of the facts of this case as required by Rule 23 (c) of the Supreme Court of the United States.

The respondents respectfully submit that the question presented is factually erroneous in the following particulars: (a) the board did not discharge the petitioner; (b) the petitioner's written contract of employment expired by its own terms; (c) the superintendent of education is vested by state law with the sole discretion and authority to recommend each year to the Board his nominee to serve as principal for the ensuing scholastic year; (d) the superintendent of education, in

the exercise of the sole independent professional judgment and discretion vested in him by state law, did not recommend the petitioner to the Board for renewal of his contract for the 1973-74 school year; (e) absent the initial recommendation of the petitioner to the Board by the superintendent of education the Board was powerless to renew the petitioner's contract of employment; (f) the fact that there was substantial community opposition to the renewal of petitioner's contract of employment was not the sole reason the superintendent of education did not recommend to the board the renewal of petitioner's contract of employment; and, (g) the decision of the superintendent of education not to recommend the petitioner to the Board for renewal of petitioner's contract was based upon substantial community opposition which was unrelated to his efforts to comply with court ordered desegregation.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondents admit that the constitutional and statutory provisions are correctly cited and reported.

STATEMENT OF THE CASE

The Leake County, Mississippi, school district encompasses the entire geographical area of Leake County, Mississippi.

Under Mississippi statutory law the Leake County, Mississippi, board of education consists of five members, each of

whom is elected by popular vote of the qualified electors of the school district. Each member is elected for a five year term and one member must be elected from each of the five beats (geographical districts) within the county.

Under Mississippi statutory law the superintendent of education of the Leake County, Mississippi, school district is an elected official and he is elected by popular vote of the entire Leake County, Mississippi, school district for a four year term.

The Respondent Price was elected by popular vote in the general election held in the year 1971 as the superintendent of education of the Leake County, Mississippi, school district and he assumed the duties of his office on the first Monday in January, 1972, commencing the four year term for which he had been duly elected.

The Leake County, Mississippi, school district has several separate attendance centers (schools), including the Edinburg Attendance Center which serves students in grades one through twelve.

The school year in the Leake County school district runs from July 1 through June 30 of each year. Principals for the several attendance centers are selected and employed to serve for one school year at a time. The Mississippi statutory law which governs the employment of attendance center principals under the facts in this case is Section 37-9-15 of the Mississippi Code of 1972 which reads as follows:

"§ 37-9-15. Selection of principals.

As soon as possible after the 15th day of January, and in no event later than the 15th day of February of each year, the superintendent of each school district shall recommend to the board of trustees thereof the principals to be employed for each of the schools of the districts except in the case of those principals who have been previously employed and who have a contract valid for the ensuing scholastic year. Unless good reason to the contrary exists, the board of trustees of the district shall approve and authorize the employment of the principals so recommended. If, for any reason, the board of trustees of any school district shall decline to approve a principal so recommended the superintendent shall make additional recommendations for the place or places to be filled. . . ."

The Petitioner Callahan was employed by the Leake County school district for three successive one-year each contracts as principal of the Edinburg Attendance Center as hereinafter stated more specifically.

The Leake County Superintendent of Education recommended to the Leake County Board of Education the name of Petitioner Callahan for the position of principal of the Edinburg Attendance Center for the next ensuing school year beginning July 1, 1970, and ending on June 30, 1971. The Leake County Board of Education approved the recommendation and Petitioner Callahan

did serve as said principal for the 1970-71 school year.

Between January 15, 1971, and February 15, 1971, according to the state statutory requirements, the Leake County Superintendent of Education recommended to the Leake County Board of Education the name of Petitioner Callahan for the position of principal of the Edinburg Attendance Center for the next ensuing school year beginning on July 1, 1971, and ending on June 30, 1972. The Leake County Board of Education approved the recommendation and Petitioner Callahan did serve as said principal for the 1971-72 school year.

Between January 15, 1972, and February 15, 1972, according to state statutory requirements, the Respondent Price, acting as Leake County Superintendent of Education, recommended to the Leake County Board of Education the name of Petitioner Callahan for the position of principal of the Edinburg Attendance Center for the next ensuing school year beginning on July 1, 1972, and ending on June 30, 1973. The Leake County Board of Education approved the recommendation and Petitioner Callahan did serve as said principal for the 1972-73 school year.

The above referenced employment contracts were fully performed by the Leake County school district as employer and by Petitioner Callahan as employee and each expired by its own terms.

The Respondent Price, in the exercise of his professional judgment and discretion and pursuant to the statutory trust and

authority vested in him as Leake County Superintendent of Education, did not recommend to the Leake County Board of Education, between January 15, 1973, and February 15, 1973, the name of Petitioner Callahan to serve as principal of the Edinburg Attendance Center for the next ensuing school year.

The Respondent Price wrote Petitioner Callahan a letter on January 18, 1973, informing Petitioner Callahan that he would not be recommended for rehiring and the content of the letter is as follows:

> " As you know, I am greatly concerned about the eudational system of Leake County, including Edinburg Center, it's staff, pupils and patrons.
>
> I have given the situation that exists there very much thought and consideration, and have decided that it is for the best interest of the school and the children that I should not recommend you to the Leake County School Board for re-employment as Principal, after your present contract expires, for the 1973-74 school term.
>
> My reason for not recommending you is that under the conditions that exist at the Edinburg Center, tensions are so high among patrons, teachers and students, that you cannot have the type of school and education that the pupils of the community are entitled to and deserve.

> This decision was made entirely for the best interest of the school and for no other reasons."

Petitioner Callahan filed this law suit on April 2, 1973, while serving the unexpired portion of his employment contract for the 1972-73 school year; and, he finished the remaining term of said contract.

Petitioner Callahan asserted in his law suit that the community opposition to his being rehired by the school district was based upon his enforcement of court-ordered desegregation. The Respondent Superintendent of Education Price, who made the initial decision not to recommend Petitioner Callahan for rehiring, claimed that the community opposition was not racially motivated. The Leake County Board of Education, after an extensive hearing, agreed. The district court upheld the decision of the board. The United States Court of Appeals for the Fifth Circuit held that the findings and conclusions of the district court were supported by substantial evidence and were not clearly erroneous.

The United States Court of Appeals for the Fifth Circuit in deciding this case said:

> " We affirm the district court's decision, not by deciding the serious legal questions posed by Callahan, but on the ground that the findings of the district court are not clearly erroneous and the facts do not support Callahan's

claim that he was dismissed for constitutionally impermissible reasons. The key to any possible relief claimed by plaintiff lies in the reason for the community opposition to him and its effect. In a case of this kind, the burden of proof is on the plaintiff to show that the conduct of the school authorities was unconstitutional.

The facts found by both the school board after extensive hearings, and the district court after evidentiary hearings and examination of the transcript before the school board, show that the plaintiff failed to prove that the community opposition was based on his enforcement of court-ordered desegregation." (App. pg. 2a).

REASONS WHY THIS COURT SHOULD NOT GRANT CERTIORARI AND ARGUMENT IN SUPPORT OF SAID REASONS

I.

The question presented by the petition is not expressed in the terms and circumstances of the facts of this case as required by Rule 23 (c) of the Supreme Court of the United States.

The petition has presented by his petition the following question:

> "Whether the First and Fourteenth Amendments and 42 U.S.C. § 1983 prohibit a school board from discharing a principal for the sole reason that there was community opposition to the principal, when that opposition was based in part on racial hostility and opposition to the principal's implementation of court-ordered desegregation."

The respondents respectfully submit that the question posed is factually erroneous in the following particulars:

(a) The Board did not discharge the petitioner; and,

(b) The petitioner's written contract of employment expired by its own terms.

> The petitioner is a non-tenured school principal (App. A pg. 1a) and his written contract of employment expired by its own terms on June 30, 1973 (App. A pg. 7a).

(c) The superintendent of education is vested by state law with the sole discretion and authority to recommend each year to the Board his nominee to serve as principal for the ensuing scholastic year; and,

(d) The superintendent of education, in the exercise of the sole independent professional judgment and discretion vested in him by state law, did not recommend the petitioner to the Board for renewal of his contract for the 1973-74 school year; and,

(e) Absent the initial recommendation of the petitioner to the Board by the Superintendent of education the Board was powerless to renew the petitioner's contract of employment.

> (App. A pg. 5a). Under Mississippi statutory law, Section 37-9-15, supra, the superintendent has the sole professional duty and responsibility to choose, select and recommend his nominee to the board for the position of attendance center principal. If the recommendation of the superintendent meets with the approval of the board, then the superintendent is empowered to enter into a written contract with the principal on behalf of the school district. Unless the superintendent initiates the recommendation, the board is powerless to act. The superintendent has the sole and exclusive recommending power for the appointment of principals. Lott v. State ex rel Kelly, 239 Miss. 97, 121 So.2d 402 (1960); Henry v. Coahoma County Board of Education, 246 F.Supp. 517 (1963), affirmed 353 F.2d 648 (1965).

(f) The fact that there was substantial community opposition to the renewal of petitioner's contract of employment was not the sole reason the superintendent of education did not

recommend to the board the renewal of petitioner's contract of employment.

> (App. D pg. 17a). The trial court specifically found as follows: ". . .that there was in fact substantial opposition among the parents of students attending Edinburg Attendance Center to the re-employment of the plaintiff as school principal and that because of this substantial opposition, his re-employment as school principal would not be in the best interest of public schools at Edinburg Attendance Center. . ."

(g) The decision of the superintendent of education not to recommend the petitioner to the Board for renewal of petitioner's contract was based upon substantial community opposition which was unrelated to his efforts to comply with court-ordered desegregation.

> (App. A pg. 8a). The Court of Appeals specifically found as follows: ". . .The record contains substantial evidence to support the findings that, despite such racially motivated opposition, Superintendent Price's decision not to re-employ Callahan was based on considerations and opposition unrelated to any efforts of the principal to comply with court-ordered desegregation. . ."

The respondents respectfully submit that the petitioner has misapprehended the

facts established in the proceedings below; and, that this court should not grant certiorari based upon the question presented with its embedded factual errors.

II.

The form of the question presented by the petition is misleading as to issues in this case.

The respondents would respectfully show unto the Court that the form and content of the question presented assumes that the board, the district court and the court of appeals made a factual determination that the failure to renew the petitioner's contract of employment was based upon community opposition; that some of the community opposition was based upon efforts of the petitioner to enforce court-ordered desegregation; and, that the board, the district court and the court of appeals made no determination that Superintendent Price's decision not to recommend Callahan for re-employment was based on considerations and opposition unrelated to any efforts of the petitioner to comply with court-ordered desegregation.

An examination of the proceedings below completely refutes such assumption. The board made a specific finding on this point which is set forth as follows:

> (App. G pg. 27a) ". . .We find that there is very little, if any, racial hostility in the Edinburg school community directed toward Mr. Leroy Callahan; and, that this was not a

> factor in the decision of Mr. H. M. Price not to recommend Mr. Leroy Callahan as attendance center principal.
>
> We further find that the administration of Edinburg Attendance Center by Mr. Leroy Callahan on a fully unitary non-discriminatory basis was not the reason for the substantial opposition to Mr. Callahan in the Edinburg Attendance Center community. . ."

The Court of Appeals below, speaking of the hearing before the board at which the above factual determination was made by the board, stated as follows:

> ". . .It is not questioned that this hearing afforded Callahan all of the procedural due process contemplated by the Fourteenth Amendment. Ferguson v. Thomas, 430 F.2d 852, 856 (5th Cir. 1970); cf. Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961). . . ." (App. A pg. 6a).

The Court of Appeals below, still speaking of the board hearing, further observed as follows:

> ". . .A school board hearing procedure which is conducted in accordance with the dictates of procedural due process is entitled to great weight. If substantial evidence appears to support the school board's action that should end the matter. The court should never substitute its judgment for

that of the Board. Toups v. Authement, 496 F.2d 700 (5th Cir. 1974); Thompson v. Madison County Board of Education, 476 F.2d 676 (5th Cir. 1973). . ." (App. A pg. 7a).

The district court specifically considered the transcript of the hearing before the board and the Findings and Conclusions of the board together with the testimony of witnesses appearing in the hearing before the district court and concluded and found as follows:

". . .This Court, having carefully examined all the evidence in this case, including the transcript of the hearing before the Leake County Board of Education, the Findings and Conclusions of this Board and the testimony of the witnesses appearing at the hearing held in this matter on July 10, 1973, finds and is of the opinion that the decision not to re-employ the plaintiff as principal of the Edinburg Attendance Center for the scholastic year 1973-1974 was not based on any constitutionally impermissible ground but solely upon the determination by the Superintendent of Education of Leake County, Mississippi, Mr. H. M. Price, that there was in fact substantial opposition among the parents of students attending Edinburg Attendance Center to the re-employment of the plaintiff as school principal and that because of this substantial opposition, his re-employment as school principal would not be in the

best interest of public schools at edinburg Attendance Center. . ." (App. D pg.17a).

Thus the case reached the Court of Appeals below buttressed by the initial determination of the board and the subsequent determination by the district court that there was no impermissible constitutional reason involved in Superintendent Price's decision not to recommend petitioner for contract renewal.

The Court of Appeals below very discerningly defined its duty in this case to be as follows:

". . .On this appeal, our review is limited to examining the record to ascertain whether there was substantial evidence to support the finding of the Board and the district court that the nonrenewal of Callahan's contract was due to substantial community opposition which was unrelated to his efforts to comply with court-ordered desegregation. . ." (App. A pg. 7a).

The Court of Appeals below, after having stated the question to itself, proceeded to reason and find as follows:

". . .The record contains substantial evidence to support the findings that, despite such racially motivated opposition, Superintendent Price's decision not to reemploy Callahan was based on considerations and opposition unrelated to any efforts of the principal to comply with court-ordered desegregation.

> Plaintiff simply failed to satisfy his burden of proving that the community opposition and the Superintendent's decision not to reemploy him was due to his interest in maintaining an integrated school.
>
> . . .
>
> The findings and conclusions of the district court are supported by substantial evidence and are not clearly erroneous under F.R.Civ.P. 52(a)." (App. A pg. 8a and 9a).

Thus, the respondents would respectfully urge unto the Court that the board, the district court and the Court of Appeals have all determined that the action of the Respondent Price in deciding not to recommend petitioner for reemployment was based upon considerations and opposition totally unrelated to any efforts of the petitioner to comply with court-ordered desegregation.

III.

This Court could not change the decision in this case unless it first overturned questions of fact decided against the petitioner by the Board, the District Court and the United States Court of Appeals for the Fifth Circuit.

For the purpose of argument under this point the respondents refer to the factual determinations of the Board, the District Court and the Court of Appeals below that are set forth in detail under II above.

The respondents would respectfully show unto the Court that the Board, the District

Court and the Court of Appeals below have searched, examined and probed through conflicting claims as to the underlying reasons why Respondent Price did not recommend the petitioner for renewal of his contract. In addition, the petitioner urged for a rehearing and for a rehearing en banc in the Court of Appeals below and all of his claims have been resolved against him.

It is respectfully submitted that there is no way in which this Court could grant the relief sought by the petitioner without first becoming a super-fact finding body and overturning factual determinations that have been painstakingly arrived at by the Board, the District Court and the Court of Appeals below.

Respondents further respectfully submit that the special competence of this Court should be confined to that of questions of law and not of fact.

IV.

The decision in this case does not conflict with decisions of this Court and other federal courts.

The respondents, by and through their attorneys, respectfully submit unto the Court that one of said attorneys has closely read and examined each of the decisions cited by the petitioner in his petition for a writ of certiorari in this case. The said attorneys would respectfully submit unto the Court that respondents have no quarrel with the law as set

forth in the decisions of this Court and other federal courts in the petition; however, the attorneys for the respondents respectfully urge upon the Court that the cases cited simply miss the mark insofar as the facts as determined by the lower courts in this case are concerned. There is no finding of fact in the courts below that the respondents have bowed to community pressure based upon opposition to court-ordered desegregation. The finding of fact in the courts below amply support Respondent Superintendent Price's contention that his decision was based upon considerations and opposition totally unrelated to any efforts of the petitioner to comply with court-ordered desegregation.

V.

The decision in this case involves only the assertion by the petitioner that he was not rehired for a constitutionally impermissible reason and the petitioner failed to prove his assertion. The decision in the case does not jeopardize the employment of school administrators and teachers.

The respondents would respectfully submit unto the Court that the Court should take judicial knowledge of the fact that it is virtually impossible to find a school related controversy, such as this case, that is sterile of racial discrimination claims. Respondents would further submit that this controversy between the petitioner and the respondents has been fully developed factually before the board and the district court and that in

weighing and winnowing process the petitioner has simply failed to carry the burden of proof that his contract was not renewed for a constitutionally impermissible reason.

The respondents therefore urge upon the Court that any time a teacher or administrator asserts that he was not rehired for constitutionally impermissible reasons the board and the district court must find the facts as to such claims. Therefore, this decision in the courts below is simply a common garden variety type of law suit in the sense that the board and the district court had to find the facts from among the competing claims and contradictory evidence. The same process must be indulged in each time such a claim is asserted by a teacher or administrator. Therefore, the decision in the lower courts in this case does not jeopardize the employment of school administrators and teachers.

VI.

The decisions in this case were right in the Courts below.

The respondents respectfully submit that under a long line of decisions of this Court the rule has been recognized that where factual determinations have been concurred in by two lower courts, the Supreme Court will not look over the shoulder of the lower courts and substitute its judgment in the absence of a clear and strong showing of apparent error in the courts below.

The respondents submit that based upon the fact finding determinations by the board, the district court and the concurrance of the Court of Appeals below in such fact finding determinations, the decisions below were fair, equitable and right.

And finally, the respondents would urge that the fact finding determinations in the proceedings below that Respondent Superintendent Price's decision not to recommend Petitioner Callahan for rehiring was based upon considerations and opposition totally unrelated to any efforts of the petitioner to comply with court-ordered desegregation preclude the involvement of any constitutional violation by the respondents. Hence, absent of fact finding determination to the contrary by this Court, this Court has no jurisdiction over the matter.

CONCLUSION

For all of the foregoing reasons and arguments, the petition for writ of certiorari should not be granted.

Respectfully submitted,

September 29, 1975

WILLIAM B. COMPTON
P. O. Box 845
426 Citizens National Bank Building
Meridian, Mississippi 39301

and

HAROLD W. DAVIDSON
114-1/2 South Pearl Street
Carthage, Mississippi 39051

ATTORNEYS FOR RESPONDENTS